

# Notice of Allowability

Application No.

09/817,005

Applicant(s)

BOSSEMEYER, ROBERT  
WESLEY

Examiner

Donald L. Storm

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006, filed March 6, 2007.

2. ☒ The allowed claim(s) is/are 1-26 and 28-32.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_

4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application

6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_

7. ☒ Examiner's Amendment/Comment

8. ☐ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Claims 1-26, 28-29, 30, and 31-32 are allowed. The claims have been renumbered for printing to be claims 1-26, 28-29, 27, and 30-31.

### ***Response to Amendment***

2. The RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006, filed by facsimile, is not entitled to the benefits of 37 CFR 1.8 since it was not deposited with the U. S. Postal Service for delivery to the U.S. Patent and Trademark Office. Therefore, the date of receipt in the U.S. Patent and Trademark Office has been used to determine the timeliness of the paper. This paper was timely received on Monday, March 5, 2007.

3. A paper also entitled RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006 was received on Tuesday, March 6, 2007. This paper was also timely received due to the presence of the Certification of Mailing statement dated March 2, 2007.

The RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006, filed March 6, 2007 seems to be the “original” submission of which the RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006, received by facsimile March 5, 2007, appears to be a duplicate filing. Duplicate filing of papers is not recommended (and may be treated as a failure to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704(c)(10)). The same correspondence should not be mailed and faxed to the Office unless the duplication has been specifically required by the Office. See MPEP § 719.01(a).

Because the “original” was timely filed on March 6, 2007 with certification of mailing, it will be entered and considered; consequently, the “duplicate” filed by facsimile on March 5, 2007 will not be entered.

*Response to Arguments*

4. The prior Office action, mailed December 4, 2006, objects to the title and claims, and rejects claims under 35 USC § 103 and under the judicially created doctrine of obviousness-type double patenting. The Applicant's arguments and changes in RESPONSE TO THE FINAL OFFICE ACTION DATED DECEMBER 4, 2006, filed March 6, 2007, have been fully considered with the following results.

5. With respect to objection to the title, the Applicant's choice carries the issue. Accordingly, the objection is removed.

6. With respect to objection to the claims dependent upon rejected base claims, the base claims have been allowed. Accordingly, the objections are removed.

7. With respect to rejections of claims under 35 USC § 103, the rejections no longer apply because the claim has been canceled.

8. With respect to rejection of claims under the judicially created doctrine of obviousness-type double patenting. The terminal disclaimer filed on March 6, 2006 is effective to overcome the double patenting rejections. Accordingly, the rejections are removed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Storm, of Division 2626, whose telephone number is (571) 272-7614. The examiner can normally be reached on weekdays between 7:00 AM and 3:30 PM Eastern Time. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Inquiries regarding the status of submissions relating to an application or questions on the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100 between the hours of 6 a.m. and midnight Monday through Friday EST, or by e-mail at: [ebc@uspto.gov](mailto:ebc@uspto.gov). For general information about the PAIR system, see <http://pair-direct.uspto.gov>. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DONALD L. STORM  
PRIMARY PATENT EXAMINER

March 12, 2007